IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 1822 OF 1993 .

Ellora Construction. ..Petitioner

V/s.

M.B. Kondani, Chief Engineer .. Respondent.

Shri K.Y. Mandalik for the petitioner.
Shri R. Ashokan for the respondent Nos.1 to 5.
Shri Vinay Sanpal, AGP for respondent Nos. 6 & 7.
Shri P.B. Shaligram for respondent Nos. 8 & 9.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 20.9. 2005.

P.C. :

. Heard.

. Shri Shaligram, learned Counsel appearing for the respondent Nos. 8 & 9 raised a preliminary objection as to the maintainability of the petition, contending that the petitioner has no locus-standi to maintain this petition. He further submitted that the Agreement of Development dated 13th May 1982 coupled with the Power of Attorney of the same date shall not create any interest in the property in favour of the petitioner as such for want of interest in the property petition at the instance of the petitioner is not tenable. He further submitted that the development agreement along with power of attorney has also been cancelled, with the result the petitioner again has no right title and interest in the property to proceed with the petition.

2. Shri Shaligram, learned Counsel placed reliance on the judgment of the Division Bench of this Court in the case of **Vimla Devi G. Maheshwari vs.D.D. Mohindra & anr. 2004(5) Bom. C.R. 263** to which one of us (Devadhar,J.) is a party, wherein this Court ruled that the person holding agreement to sale does not have any interest in the property, in that view of the matter, the agreement holder can not have right to maintain the petition. Based on this view, the learned Counsel submitted that the present petition is liable to be dismissed for want of locus in favour of the petitioner.

3. Learned AGP for the State has submitted that the exemption granted in favour of the landholder under section 20 of the Urban Land Ceiling Act('ULC Act' for short) was subject to certain conditions. The breach of those conditions was to result in withdrawal of the exemption. According to the learned AGP, in view of breach of the exemption order by the landholders, the State Government has withdrawn on 29.6.2005 exemption granted in favour of the landholder under section 20 of the ULC Act during the pendency of the petition. He, thus, submits that the land has now been vested in the State Government under the provisions of the said ULC Act and, therefore, interest of the owner as

well as that of the petitioner, if any, has come to an end. Be that as it may, validity of the withdrawal of exemption is not a subject matter of this petition as such it cannot be gone into in this petition.

4. Per contra, Shri Mandalik, appearing for petitioner submitted that the petitioner was placed in possession of the property for development and therefore, he has a interest in the property in question. Consequently, petitioner herein is entitled to maintain this petition and proceed with the same.

Consideration:

5. Having heard rival parties, without taking into account withdrawal of exemption order and/or validity thereof and/or without considering validity of the act of termination of the power of attorney, but, taking into account the undisputed facts, the petitioner, who claims to have been put in possession of the property as developer under the agreement of development, cannot have locus-standi to maintain this petition as held by this Court in the case of Vimla Dev (cited supra).

6. In the above view, the petition is dismissed for want of locus-standi in favour of the petitioner, upholding the preliminary objection

raised by the learned Counsel appearing for respondent Nos. 8 & 9. So far as merits of the impugned order or action is concerned, we express no opinion. Rule is discharged with no order as to costs.

7. Needless to mention that with dismissal of the petition, Civil Application would not survive.

(J.P. DEVADHAR,J.) **(V.C. DAGA,J.)**